

May 17, 1983

OPTIONS MEMO

SUBJECT: Administrative Remedies/Table of Penalties

FOR: Cabinet Council on Management and Administration

I. Issue

The Office of Personnel Management has prepared a Federal Personnel Manual (FPM) letter encouraging agencies to establish a table of penalties to be used in deciding what sanctions should be applied in various cases of employee misconduct. The letter would be issued with a sample table, although the letter has been worded in such a fashion as to indicate clearly that the sample is "for instructional purposes only," and is not to be regarded as a governmentwide standard. A policy decision is needed on the question of whether to issue the letter in this form, or to omit the sample table, as has been recommended by a few agencies concerned about the potential impact on cases which come before MSPB officials or the courts.

II. Background

Earlier this year, the Committee on Administrative Remedies and Incentives (CARI) of the President's Council on Integrity and Efficiency issued its final report, which included a recommendation that OPM issue a sample table of penalties and encourage all agencies to adopt such a table tailored to their own specific needs and requirements. Copies of the report were circulated to members of the PCIE, and all agency personnel directors for comment. In general, the Inspectors General favored a mandatory governmentwide table, while personnel directors, as a rule, opposed the issuance of even a sample table. Based on the comments received, OPM modified the wording of the FPM letter to deal with concerns expressed by a number of personnel directors that a sample table might be used in appellate proceedings against agencies which had penalties which were greater than or less than those set forth in the sample table.

The issue was then sent forward to the CCMA Secretariat on April 22, at which time it was learned that many of the official agency comments on the proposal had not been reviewed at the Assistant Secretary level. It was decided that the CARI report and the revised FPM letter would be circulated among members of the CCMA Secretariat, the Assistant Secretaries for Management Group, and the Governmentwide Personnel Policy Group for additional comment. The issue was discussed at the ASMG meeting of May 4th and the GWPPG meeting of May 13th. Written comments were received from six departments and agencies, with three favoring issuance of the FPM letter as revised, and three opposed.

Additional revisions of the draft FPM letter have now been made, including revisions suggested by the Department of Justice which would make even clearer the fact that the sample table is not to be regarded as a standard against which agency tables are to be judged in any appellate forum. OPM believes that the FPM letter, in its present form, responds to all of the concerns raised by agencies who are uneasy at the prospect of a sample table, and we believe this approach will best accomplish the goal set by CARI, to ensure that administrative action is taken when instances of misconduct occur in the federal service.

III. Options

1. Issue no governmentwide guidance on this issue at all.
2. Issue an FPM letter encouraging agencies to create their own tables of penalties, but do not include a sample table. Under this option, agencies would be left with virtually no guidance from OPM as to how to go about constructing a table of penalties, and inevitably would have to conduct research into the way in which other agency tables were constructed. This would lead to haphazard development of such tables, lacking any overall guidance and coordination.
3. Issue the FPM letter as revised, with a sample table of penalties. This would implement in full the recommendation of CARI, while meeting most of the concerns raised by agencies uncertain at the prospect of issuing a sample table.
4. Issue a mandatory governmentwide table of penalties, as suggested by many IGs. In OPM's view, this would unduly restrict agency flexibility, and would not allow for variations in circumstances and responsibilities among agencies.

IV. Recommendation

OPM recommends option 3.